

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
New Jersey Public Broadcasting Authority)	File No. BLFT-20071130ADA
)	Facility ID No. 143128
Request to Cancel License for Translator)	
DW276BX, Pompton Lakes, New Jersey)	
)	
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MEMORANDUM OPINION AND ORDER

Adopted: May 7, 2014

Released: May 8, 2014

By the Commission: Commissioner Pai issuing a statement.

1. The Commission has before it a November 1, 2010, Application for Review filed by Mariana Broadcasting, Inc. (“Mariana”), involving the grant by the Media Bureau (“Bureau”) of the voluntary request by New Jersey Public Broadcasting Authority (“NJPBA”) to cancel its license for FM translator station W276BX (now identified in the Commission’s licensing records as DW276BX), Pompton Lakes, New Jersey.

2. To begin with, we conclude that Mariana lacked standing to file the Application for Review. Section 1.115(a) of the Commission’s rules allows “any person aggrieved by any action taken under delegated authority” to seek Commission review of that action with an application for review. Thus, an applicant for review must demonstrate an actual or threatened injury to itself as a direct result of the challenged action.¹ Here, however, as of November 1, 2010, the date on which it filed its Application for Review, Mariana had neither an agreement with NJPBA to rebroadcast its AM signal over the translator at issue or acquire the translator license, nor any authorization from the Commission to so operate. Under these circumstances, as of the date the Application for Review was filed, the Bureau’s cancellation of the translator license was not causing any injury to Mariana because it had no reasonable expectation to use the facility with its AM station.

3. Moreover, Mariana’s claimed harm – its inability to so operate – would not be redressed by the relief that it has requested – reinstatement of the translator license. As the Bureau has noted, notwithstanding Mariana’s rhetoric, the Commission cannot force NJPBA to take back the station authorization and operate the translator. Furthermore, even if the Commission so acted, the record contains no indication that NJPBA has agreed to allow Mariana to use or acquire the translator, and it is

¹ See *Hanford FM Radio*, Memorandum Opinion and Order, 11 FCC Rcd 8509, 8511 (1993) (applicant for review must identify “direct economic or other connection” between its interests and the challenged Commission action), citing *Clarke Broadcasting Corp.*, 11 FCC Rcd 3057 (1996). See also *Warren Ache*, Memorandum Opinion and Order, 9 FCC Rcd 2464, 2467 (1993) (“A party seeking to establish standing to file a petition to deny must demonstrate not only a direct or threatened distinct and palpable injury, but also a causal link between the claimed injury and the challenged action. The causal link must be demonstrated by establishing: (1) that the injury can be traced to the challenged action; and (2) that the injury would be prevented or redressed by the relief requested”), citing *Lawrence Brandt*, Memorandum Opinion and Order, 3 FCC Rcd 4082 (CCB DFD 1988); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59 (1978).

entirely speculative whether NJPBA would consent to such an arrangement. For all of these reasons, Mariana lacked the requisite standing to seek review of the Bureau's cancellation of the translator license.

4. Additionally, Mariana raises certain factual claims and legal arguments for the first time in its Application for Review.² Section 1.115(c) of the Commission's rules prohibits parties from raising new arguments on review.³ Accordingly, we dismiss the new facts and arguments as procedurally barred and otherwise deny the Application for Review.

5. ACCORDINGLY, IT IS ORDERED that: (1) the Application for Review of Mariana, Inc. IS DISMISSED, pursuant to 47 C.F.R. § 1.115(c), to the extent that it relies on questions of fact or law not previously presented to the Bureau; and (2) the Application for Review otherwise IS DENIED, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

² Although Mariana presented public interest arguments in its prior petitions for reconsideration, the Application for Review relies in part upon new evidence in an attempt to bolster such arguments, including a letter attached as Exhibit A to the Application for Review.

³ See 47 C.F.R. § 1.115(c); *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003) (upholding Commission's order dismissing arguments under Section 1.115(c) because that rule does not allow the Commission to grant an application for review if it relies upon arguments that were not presented below).

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *New Jersey Public Broadcasting Authority Request to Cancel License for Translator DW276BX, Pompton Lakes, New Jersey.*

Mariana Broadcasting has presented a compelling case for why it would be in the public interest for WGHT(AM), a daytime-only station, to have an FM translator. WGHT covers local news, weather and community events. And it covers them well, judging from the awards it's won for doing so. But when the sun sets, WGHT must go off the air, and no radio station serving Pompton Lakes, New Jersey provides nighttime coverage of local news. This is why Mariana's Application for Review is supported by local law enforcement, emergency responders, and elected representatives.

For these reasons, I would like to vote to grant Mariana's Application for Review. But as explained in the item, the law compels a different result. Going forward, I hope that the Commission soon will open an FM translator window for AM stations so that WGHT and other stations across the country will have an opportunity to improve the local service they provide to their communities. The record compiled in our AM Revitalization proceeding contains overwhelming support for this proposal,¹ and there is no reason to delay moving forward.

¹ *Revitalization of the AM Radio Service*, MB Docket No. 13-249, Notice of Proposed Rule Making, 28 FCC Rcd 15221 (2013).